Discussion Paper Series

Women's Bureau
Unions and Bank Workers:
Will the Twain Ever Meet?

Canada

Women's Bureau
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Will the Twain Ever Meet?

Prepared for the
Women's Bureau
Labour Canada
by
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Note: The opinions presented in this paper do not necessarily reflect the views of Labour Canada.

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FOREWORD

Equality of opportunity and treatment for men and women in the workplace, as required by Canadian and international (United Nations and International Labour Organization) objectives, may be achieved by policies and programs initiated by employers; government intervention in the form of legislation; union-management agreements through collective bargaining; moral suasion and the education of our children. Enforcement of legislation presupposes the availability of a large pool of labour (employment) standards officers. The current economic realities preclude such a possibility. Thus, collective bargaining would appear to be a more desirable avenue for fostering employment equality for women.

Readers may be aware that the collective bargaining process in the banking industry in Canada has made very few inroads. While unionization in the female labour force in Canada had reached 24.5 per cent in 1981, efforts to unionize Canada's banking industry have been characterized by pioneering victories as well as severe set-backs.

Under Labour Canada's jurisdiction, the banks are the single largest, and the least unionized employers of women. Why? This study, prepared for the Women's Bureau by Elizabeth Beckett, describes the interplay of several factors which partially explain the slow growth of unionization in the banking industry.

By offering an historical review and analysis of the impediments in more detail, this discussion paper will, I hope, sharpen public understanding of the process of and reasons for limited unionization in such a high-asset generating sector of our economy.

Ratna Ray, Ph. D.
Director
Labour Canada's
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June 1984

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UNIONS AND BANK WORKERS

Will the Twain Ever Meet?

Introduction

There are 150 000 people working in banks in Canada. Ninety per cent of them are female, and less than one per cent are represented by trade unions.

In 1977, the Canadian Labour Board decided that it would recognize a single branch of a bank as an appropriate bargaining unit. In 1978, the Canadian Labour Congress, one of the largest labour organizations in Canada, pledged money and people to the effort of organizing bank workers. The Canada Labour Code was amended in the late seventies to allow the Minister of Labour to direct that the Board should investigate situations where first contract negotiations were lagging and, if necessary, impose an agreement.

These three changes would, it was hoped, allow formerly hard to organize groups of workers to create trade unions in their workplaces. Small units were recognized, a remedy was available for intransigence at the bargaining table and a major trade union organization had committed itself to the task of organizing these workers. For all of this, bank workers remain unorganized. The fact is that the number of organized bank workers is actually about the same now as the high of 1 000 achieved in 1979.

In the intervening four years the number of decertifications seems to suggest that the original ground swell of support is showing a tendency to lose ground rather than gain it.

If one could be assured that the situation in chartered banks in Canada was simply a reflection of the fact that bank workers chose not to engage in collective action vis-à-vis their employers, it would not be cause for concern: freedom to organize also means freedom not to organize. This explanation, however, is too superficial. When such fiercely independent, well-remunerated and powerful people as medical doctors recognize the value of collective action, and demonstrate it to the public, it strains credibility to believe that bank workers choose to retain their employee relationship as individuals rather than attempt to come together to use group strength to affect the setting of their terms and conditions of employment.

If the simplistic answer is to be rejected then one must ask, What are the factors that are causing this sector to remain unorganized? In attempting to answer this question, the writer has reviewed academic writing; interviewed bank representatives, union organizers, and Labour Standards employees who handle complaints from unorganized workers; and reviewed decisions under the Canada Labour Code. The scope of this paper did not allow face-to-face interviews with bank workers; however, several of the areas investigated revealed some of the thinking of these employees which shed light on the dynamics of unionization in this unique workplace. This is not an empirical study of bank workers. Rather, it is a generalized inquiry designed to gain some impression of how corporate structure, employee position within the structure, the institutional framework for regulating collective employee relationship with the employer, and organizing strategies of the unions have interacted to create the present situation in Canadian banks.

An examination of the influences of these factors suggested several possible changes.

PART I - THE PARTICIPANTS

(A) The Workers

The most striking feature of the work force in the money market area is the sexual segregation of the employee groups. The division of labour appears to be between low-paid female clerical workers and higher-paid male supervisory and managerial staff. In a study reported in 1971, entitled, ironically, Manpower Utilization in Canadian Chartered Banks,[1] Bossen noted that 89.7 per cent of all women earned less than $5 000 per year while 72.3 per cent of all men earned more than $5 000. Further, many of the low-paid males were in trainee positions and were destined for managerial work.[2] These 1968 figures were confirmed by Statistics Canada in 1973.[3] At that time, there were an estimated 151 319 persons working in the money market, of which 66.2 per cent were women. Yet, only 3.4 per cent of executive and managerial staff was female. This is sharply contrasted with the clerical and related category, which was 83.9 per cent female. Decisions of the Canadian Labour Relations Board confirm that the high percentage of female staff in the lower echelons of the bank establishment has not changed since Bossen's study.[4]

Wages in this sector remained low. In 1976, the starting rate for a teller in an urban bank was $7 200 per annum.[5] Today, a teller in Metropolitan Toronto would start at $11 900.

It should be noted that banks are not alone in hiring women to do clerical work. Figures from 1941 to 1981 show that clerical work has traditionally been women's work.[6] Recently released 1981 census data show that this occupational category remains constant in its sex composition.

The dramatic influx of women into the labour market (female labour participation rate rose from 20.7 per cent in 1941 to 51.6 per cent in 1981[7]), has parallelled the remarkable growth in paperwork. As industrial processes become more complex, more and more clerical work is required to plan, schedule, account, correspond, bill, copy and file. The advent of computer technology in this area, therefore, poses a particular threat to women workers. The "reserve army," as women workers are often called, may no longer be needed. Women accounted for 72 per cent of all part-time workers in 1981, with married women making up 45.5 per cent of the total. Further, nearly 89 per cent of women working had some secondary education or higher.

The profile of the female worker that emerges from this data is consistent with the portrait of the bank workers as described by Lowe. He states:

> It is useful to provide a socio-demographic profile of the union members interviewed for the study. While no point of comparison with non-union bank employees exists, this profile is nonetheless suggestive of the type of employee who joins a bank union. The typical interviewee was a woman 32 years of age with high school education and at least four years of banking experience; married to a blue-collar worker and with a family; no previous union involvement but with unionists among family and close friends; and currently holding an elected position in a bank union.[8] (emphasis added)

The female bank clerk is, in short, the typical female worker in Canada. Although she has been stereotyped by the employer as not being well-educated, having only minimal attachment to the work force and being generally uninterested in unions, this stereotype does not stand up to close examination.

Although the number of women in the trade union movement had risen dramatically in the mid-seventies, this trend was never reflected in

the case of banks. As clerical workers, however, bank workers are not atypical in this regard. Union activity is concentrated in groups such as teachers, government employees, hospital workers, and in areas where women office workers have been unionized after plant organizing; for example, auto workers and steelworkers. Female unionization trends that the statistics of the seventies appear to document are partly due to the success of public sector unionism, rather than a more generalized picture of the female worker.

Studies of the Canadian family indicate that the wife/mother working outside the home is the dominant family type.[9] The entry of a woman into the labour force does not, however, increase the husband's contribution to labour in the home.[10] Since this work must still be done and, since women are concentrated in low-paying work, one can only conclude that the employed women continues to shoulder the majority of work in the home. Child care continues to be the responsibility of the mother. When a woman works, it falls to her to find adequate day care.

The picture of the woman worker in the fifties, when unionization was beginning to rise, was of a woman of low skill, low education, in the work force until she married or had children. The picture of the woman worker today is of a woman with at least some secondary schooling, but no specific skill prior to entering the work force. The pattern of her attachment to the labour force is now that which was usually associated with men. Her dual role of a worker, both in the home and in the work-place, however, places a heavier burden on her. A number of women will attempt to handle this role by working part-time and attempting to schedule their working time to accommodate the needs of their families.

Since family responsibilities no longer keep women out of the work force, the juggling of these responsibilities suggests a direction that unions might take to attract the female worker. While the male labourer may need money or more status or better benefits from his union, the female worker requires, in addition to these traditional benefits, negotiations aimed at attaining provisions to assist her in fulfilling her dual role in society. Benefits of particular value include protection of seniority for a woman who leaves the work force to nurture a child through the early years of childhood; provisions for job sharing; acceptance of flexible time schedules; on-site day care facilities; availability of a company-paid homemaker to care for a sick child that cannot attend his or her regular day care arrangement. To date, little headway has been made in these areas.

(B) The Employer

The banking industry is a huge, highly bureaucratized structure, operating across Canada and internationally. Yet, it is also the little branch in a local plaza, employing six people. Canada has ten chartered banks that have a total of 7 000 branches across Canada. The Report of the Royal Commission on Banking and Finance refers to the chartered banks as 'the heart of the private financial system'. 'They are the country's largest deposit institutions, its main source of short-term credit, and managers of its payment system.'[11]

In its early decisions regarding bank bargaining units, the Canada Labour Relations Board went to some lengths to describe the organization of banks.[12] The Bank of Nova Scotia is typical. In 1977 it had 945

branches in twelve regions across Canada, with a total staff of 19 941 employees. At the head of the bank is the Chairman and President, who has an Executive Assistant, as well as a Manager of Information. There are two Deputy Chairmen with various departments responsible to each. There is an Executive Vice-President, as well as a Chief General Manager. There are various divisions within the bank, responsible for different aspects of the bank's business: Personnel (now called Human Resources, in most banks), Commercial Lending, Administration, to name but a few. Below all these head office functions are Regional General Managers, each of whom carries the title of Vice-President. Most regions have a data centre, a marketing department, a real estate division, etc. Then there are the individual branches. These are not independent profit centres, nor administratively autonomous entities. They are run by Branch Managers, who are closely controlled by decisions made at the regional and head office level.

Banks are powerful and conservative institutions. Their employer-employee relations have been characterized as paternalistic.[13] The individual branches operate in a close-knit, family-like atmosphere. Mottos like, "We are a team," "We should pull together for our bank," and "Hard work will get you ahead" indicate the philosophy banks attempt to use to motivate their work force. Leighton characterized banks as being "slow to adapt to the discontinuities and social changes that hit them in the seventies, and will continue to be slow."[14] He went on to say that "many banks operate with obsolete organizational structures, more relevant to the fifties than the eighties." He describes personnel practices as outdated, noting that managers tend to be long-term employees of the same bank, most without university education. In Leighton's view these "old

time type managers" cannot bridge the generation gap, and have trouble handling newer head office employees who are recruited from M.B.A. programs, who do not have intense loyalty to the bank and who may be women. He states that traditional bank managers, having a "myopic world view...do not believe that the world has changed and won't change back."

In an article describing the bank branch of the future, a similar view of major changes is presented, this time because of changing technology. "Customers in future should find less and less need to enter a bank building.... Routine financial transactions -- bill paying, fund transfers, cash procurement, and the making of deposits -- can be handled by terminals.... Banking will be more capital intensive and less labour intensive."[15] The proliferation of automatic tellers, which allows access to banks on a 24 hour per day basis without the need for employees, indicates that this view is not mere cloud-gazing.

Banks have been fierce in their desire to keep unions out of their institutions. Muthuchidambaram lists tactics used to discourage and kill unionism, and a review of the case law shows that banks have not been loath to use at least some of them. They include: "effective use of captive audience, systematic interrogation of employees, promulgation and discriminatory enforcement of no access, no distribution, no solicitation rules, threatening loss of certain existing benefits, either encouragement of formation or revival of a grievance committee as union substitution, management initiated pre-certification and post-certification litigation based on legal technicalities or loopholes with a view to frustrate unionization or kill an infant union by sheer war of nerves, conversion of

management right to discipline employees into union-hunting licence, employer systematic pre-certification polling of employees regarding their union sentiment, misuse of employers' freedom of speech prior to and during certification."[16]

The work force is highly transient, with turnover rates among clerical staff running to over 30 per cent.[17] Bank personnel I spoke to characterized themselves as good employers and, indeed, cite "country-club" management as the reason for low rate of unionization in banks. Banks do not post job openings, and steadfastly defend their right to promote based on merit. No connection is made between these policies or rates of pay and high turnover. Rather, the turnover is blamed on the assumption that women workers do not have a strong attachment to the work force. The bank's corporate branch structure gives it the power to move personnel from one branch to another. These moves can be for a number of reasons related to maintaining a correct staffing complement at any individual branch. This could be a very useful tool for disrupting union organizing. It is difficult enough to prove that a person has been fired for union activities, but to show that a transfer had this motive is close to impossible. A branch is a very fluid place, and reasons can usually be found to justify decisions to reallocate staff.

Grievances and personnel practices in banks are discussed in some detail, as they are key issues in unionization drives. Each bank has a grievance procedure. The two I shall discuss were put in place after the desire for unionization began, although they had been on the drawing board before then.

INTERCOM is the procedure instituted by the Canadian Imperial Bank of Commerce. It is described as the employees' private line to management. A packet explaining the program is made available to each employee. This packet contains two aerogram-type post cards. The employee fills out one with her or his home address and telephone number. The INTERCOM Co-ordinator will communicate with the employee, in writing. No communication is made with the employee's supervisor without the consent of the employee. Replies are said to be made within ten days of receipt of complaint. INTERCOM will deal with any subject the employee has concern about. To quote the brochure:

> Any subject whatever that has to do with yourself, the Bank, or your working relationship; your job requirements, your pay and benefits; relations with supervisory staff or other employees; ideas for better service or systems; criticism of the way things are done. You may question, criticize, complain or simply make your views known. It's up to you.

The key to INTERCOM is its assurance of absolute condifentiality. It is a parallel grievance procedure to the regular practice which involves the usual hierarchical method, wherein one takes a complaint to one's supervisor and that supervisor either settles it or takes it to her/his supervisor.

At the Toronto Dominion Bank, the system is called BETWEEN US. It operates exactly the same way as does INTERCOM. Aerograms, to be mailed by employees, are available in every branch. The accessibility of these to employees is verified by the bank inspectors. Again, the complaint or comment is mailed to a special Co-ordinator, who communicates with the employee within ten days. Absolute confidentiality is assured. If it seems appropriate, and the employee consents, a Co-ordinator may go into the branch to assist in the settling of the matter. As in the Bank of

Commerce, this system is not meant to replace the handling of personnel matters in the more traditional way, but rather to allow an employee access to someone outside the structure, if the employee feels the need. In the normal course of things, a teller's complaint would go first to the Administrative Officer (office manager), then to the branch manager, then to the Human Resources Manager of the region.

Information regarding numbers and types of complaints was unavailable; however, the writer was told that most have to do with benefits questions that actually could have been handled at the branch level.

Staff performance evaluations are handled along the same lines. Standard forms are supplied to branch managers, who complete them with a recommendation. These are sent to regional offices, where decisions are made consistent with bank policies and requirements. These performance evaluations, and not seniority, are the key to promotion.

The tendency in banks now is to recruit for managerial staff at the university and community college level. This would indicate that one does not so much "work one's way to the top," but rather is placed at the bottom and moved through the system as a managerial trainee. The writer was also informed that women are recruited proportionately to their representation in M.B.A. programs and business programs at the community colleges.[18] This indicates that female managerial staff is recruited specifically, and that staff recruited and/or hired as tellers are unlikely to become managers.

According to Bossen[19] a person who is training to be a branch manager can expect an average of 15 transfers in the course of his or her

career. This need for mobility is cited as one of the chief reasons why women are unwilling to enter management ranks in the banking industry. Given the large numbers of families now requiring two incomes, it may become increasingly difficult for men to accept this number of moves. The lack of work opportunities in a new location for a manager trainee's partner, or, simply, an unwillingness to tolerate continual disruption of family life, are being cited more and more frequently by persons who are dissatisfied with this type of management training. It may well be that, if banks are to continue to attract the best people for the job, they will have to adopt new methods of training which accommodate to the life style of the eighties.

(C) The Unions

The task of organizing bank workers was undertaken by two very different types of unions. Neither type achieved any real measure of success.

The current[20] effort to unionize banks was initiated by the Service, Office and Retail Workers Union of Canada (SORWUC). This was a "grass roots, women-oriented union,"[21] independent of any trade union organization, located in Vancouver, British Columbia. It was founded in 1972, with the goal of organizing the unorganized. In 1976, when the bank workers' organizing was begun, SORWUC had organized four day care centres, five social service units, one legal office, one student office, and a tuxedo rental store.[22] A union of this size taking on the Canadian banking system seems ludicrous, yet it achieved what no other labour organization

had accomplished, and created the impetus for the organizing efforts under way today.

At the beginning it was a "crazy, impossible idea." An Account to Settle puts the idea very poignantly:

> The total assets of the Canadian chartered banks in 1976 were $119 944 425 000. There were 7 113 bank branches in Canada of which 836 were in B.C. They employed 130 111 people.
>
> We were just six people in one branch in Vancouver.[23]

The issues identified by SORWUC in its organizing effort included overtime, arbitrary power of supervisors, personal favouritism, petty harassment, no regard for seniority in promotion, inadequate training of tellers that led to failure to balance the flow of work, and low wages.

SORWUC was committed to having a union run by its own members. It rejected help from larger trade unions when their help had strings attached which effectively would lead to SORWUC's loss of control. The result was that the larger unions gave no real help. Smaller, independent and purely Canadian unions did give assistance, but it was not enough to keep SORWUC going in the face of huge organizing costs and a $30 000 legal bill. In total, SORWUC received $50 544 from other unions from October, 1976 to July, 1978. Some of this was in the form of loans, some donations. The Canadian Labour Congress, which represented approximately 70.9 per cent of union members in B.C., donated less than half of the total donations. In the last six months of SORWUC's campaign, CLC donations fell to under $500.[24]

During the three years of its campaign, SORWUC signed up a total of 733 bank workers. Its highest number of members in good standing at any one time was 422, achieved in August of 1977.

At its demise, SORWUC described the situation:

> We would be trying to negotiate 24 branch agreements without even one paid representative. We were three months behind in our rent. Thousands of dollars in other debts had piled up, as well as our $30 000 legal bill. We could no longer afford the cost of travelling expenses and lost wages to have bank workers attend negotiations. We did not have the support of enough bank workers to conduct an effective strike and could not get a good contract without one. Our organizing drive had come to a halt; we hadn't signed up a significant number of bank workers in months.[25]

Although the book An Account to Settle chronicles a fierce anti-union campaign by the chartered banks, SORWUC, in its press conference announcing its withdrawal from negotiations, placed the blame for its failure at least equally at the door of the CLC. It said, "The lack of support form the CLC has hindered our campaign as much as the anti-union actions of the banks. As long as most unions in British Columbia continue to kowtow to the CLC executive, thousands of workers will remain unorganized."[26]

At the same time as women bank tellers in British Columbia were beginning to organize, a group of tellers in Port Dover, Simcoe, and Jarvis, Ontario, were also attempting to organize. Although they initially approached a small breakaway union, they were eventually certified under the Canadian Union of Bank Employees.

The Union of Bank Employees (UBE) grew out of a decision taken at the 1978 CLC Convention. The Canadian Labour Congress is a central labour organization which was formed in 1956 by the merger of the Trade and Labour Congress of Canada, which comprised mostly craft unions, and the Canadian Congress of Labour, which was made up mainly of industrial unions. As of 1980 the CLC consisted of 18 national, 65 international and 28 government unions, as well as a small membership in directly chartered

local unions. The total membership represented 2.3 million workers, that is, 73.6 per cent of the trade unionists in Canada.[27]

The CLC decided to make an all-out effort to organize bank workers. Laraine Singler, formerly with the British Columbia Government Employees Union, was hired as National Co-ordinator of the effort. It was called the Bank Workers Organization Committee. An affiliate fund was developed to finance the effort. The strategy was to use existing locals to make inroads into the banks. These locals would do initial organizing, with the plan that eventually the bank workers would amalgamate into a bank union, the Union of Bank Employees.

In total, 66 certifications were applied for. Forty-five branches are now still organized, representing about 400 employees. At the high point of their organizing, they had 800 members.

It is startling that an organization as large as the CLC should have achieved, in its now almost four years of effort, little more than did the tiny SORWUC union. Some persons are critical of the Bank Workers Organization Committee because of its lack of identification with women's issues and its top down style of management. Yet this organization was successful at negotiating contracts, something that SORWUC, with its grass roots, feminist orientation, failed to do.

What is striking about the short history of bank unions is that the very thing that causes success at one stage spells failure at another. The corporate structure with its particularized management appears to require branch-by-branch organizing. Yet, successful negotiation requires cross-industry bargaining. Branch-by-branch organizing requires ready identification by the organizer of the issues that particularly affect the

female bank worker; this could be most successfully provided by a small women-oriented union. But the resources of a large trade union are required to finance the organizing and servicing of the small yet geographically diverse units. While the issues might most persuasively be raised by a small feminist union, the negotiating skill of a powerful, seasoned trade unionist is needed to reach a meaningful settlement with an employer such as an international bank.

Two other unions are actively organizing bank workers. These are the United Food and Commercial Workers International Union, formerly the Service Workers and Retail Workers Union, and the Confederation of National Trade Unions. Both of these unions are most active in Quebec. The UFCW has organized about 1 000 workers, but has only two locals outside of Quebec. The CNTU, which is the second largest central labour body in Quebec, has organized only in that province. Much of the organizing of these two unions has been with Caisses populaires and the National Bank of Canada. These financial institutions are much smaller than any of the five major banks in Canada. Indeed, the success in organizing in Quebec may be partially due to the size of the corporate entities of these financial institutions.

The only other union that has existing locals in the banking industry is the United Steelworkers of America. It has three locals organized in banks and three in credit unions. Two of the bank branches are in Quebec. The total number of bank workers represented is less than 50.

Union activity to date can be summarized as follows: total applications - 170; total currently certified - 75; total withdrawn - 7; total rejected - 30; total revoked - 56 (of this 56, 26 were SORWUC certifications that were revoked when SORWUC withdrew from negotiations).[28]

PART II - THE INTERPLAY AND THE RESULTS

(A) The Contracts

> All bank workers benefited from the campaign. When the SORWUC drive began, bank workers in Greater Vancouver started at $600 per month or less, and the average wage for a teller was $636 per month. According to the **Vancouver Sun**, July 4, 1979, bank tellers received the largest pay increase of any category of clerical workers in 1978 -- 15.4 per cent. The average wage for tellers is now $885 per month. All banks introduced dental plans, and there are no longer deductions from tellers' wages to cover cash shortages. The Commerce has instituted regular coffee breaks and pays overtime on a daily basis. The Bank of Montreal has a job posting system in some districts. Several banks have improved vacations. These changes resulted from the union scare; imagine what we could win if we could threaten a strike.[29]

Whether or not the gains listed above can be credited to the union scare, it is indeed true that unless sufficient branches become organized so that strike action could be a real threat, or even a minor inconvenience, the concessions gained at the bargaining table will be very small. Current contracts, many achieved only after long months of bargaining, reflect this reality. One banker suggested to the writer that in order to have an effective strike one would need to be able to bring out at least ten branches in the same geographic area.

The Canadian Labour Congress Research and Legislation Department did comparative analysis of seven representative bank contracts attained by the Union of Bank Employees.[30] The analysis looked at ten key areas: hours of work and overtime; layoffs and recalls; policing the collective agreement; salary administration; seniority; strikes and lockouts; union notice bulletin boards; union recognition; union security; and vacancies, staffing and job postings.

The findings are highlighted below.

(i) Hours of Work and Overtime: All the contracts contained provision for a 37½ hour workweek, with six of the seven providing for two 15 minute breaks. Meal allowances were available for staff working overtime, in four contracts. There were provisions for minimum payment on recall in four contracts, and provision for sharing overtime as much as possible, with seniority having first chance to accept, in one contract.

(ii) Layoffs and Recalls: Only two agreements required advance notice of a layoff or pay in lieu of notice. Only one agreement allows a reasonable time period for the employee to perform the work; others required immediate ability to carry out the full requirement of the job. This severely restricts application of bumping clauses. Only one agreement requires notice of recall to be sent to the Union Steward; however, in one agreement, reasons for layoff must be given to the Union Steward. Generally, the provisions in this area do not provide adequate protection to employees, nor do they contain adequate vehicles to assist the union in policing this area of management discretion.

(iii) Policing the Collective Agreement: This is an area where the contracts have been severely restricted by the employer. In one contract, there is no provision for recognition of the Shop Steward, while in others, provision for payment of wages when doing union business is minimal. One contract requires the branch manager's consent for the full-time representative of the union to talk on the telephone to the Shop Steward. The representative may only meet the Shop Steward with the bank's consent, and only outside public banking hours. One contract does have better

provisions, and even requires the bank to meet with the union at the union's request, on the bank's premises.

(iv) Salary Administration: No contract had provision for promotion to be based on seniority. Merit continues to be the guiding principle. In this regard, unionized employees have gained little. As pointed out earlier in this paper, the promotion on merit is a strong principle in banks' personnel policy.

(v) Seniority: Probationary periods range from three to four months. One Loan Officer has a 12 month probationary period. In a number of agreements, probationary employees are expressly prevented from grieving discipline or discharge. Some contracts make provision for two seniority lists, which serve to fragment the bargaining unit and prevent part-time employees from becoming full-time.

(vi) Strikes and Lockouts: Most agreements have explicit restrictions as to strikes, slowdowns, boycotts, etc. Banks agree not to lock out.

(vii) Union Notice Bulletin Boards: The striking thing about all these clauses is that, except in the contract where no provision at all was made for a bulletin board, all contracts require the bank's approval prior to posting of any notice. This despite the fact that clauses specify that notices may only be about union business, social events or conventions.

(viii) Union Recognition: The contracts cover regular full-time as well as regular part-time employees, generally up to the rank of Loan Officer.

(ix) Union Security: Six contracts require authorization for deduction of union dues as a condition of employment. One contract states the amount of dues.

(x) Vacancies, Staffing and Job Postings: This is obviously a very sensitive area with the banks. Many qualifications are built into the posting, so that in some cases there is really no restriction whatever on who is chosen to fill vacancies. In this area of the contract, the banks have been reluctant to accept seniority as a criterion for staffing, by making it the last factor to be considered, and then only if other factors are relatively equal. Some contracts contain a provision that an employee spend at least 12 months in a job before applying for a new job.

The contracts obtained by the Steelworkers follow the same pattern.

All contracts contain very similar holiday benefits which are consistent with existing bank policy. Maternity benefits are consistent with Part III of the Canada Labour Code, and rarely is more time granted than is required by statute. No contract makes provision for time off to care for an ill child. There is no provision for flextime working arrangements, nor for job sharing.

It is recognized that these are first contracts in many cases; however, provisions negotiated on second contracts do not seem significantly different. Under these circumstances the type of provision negotiated would probably not be considered sufficiently superior to encourage a move towards unionization.

It is difficult to assess the impact the presence of unions has on the general working conditions of bank workers. On one hand banks are extremely reluctant to grant any concessions at the bargaining table that would put the unionized worker in a better position than the non-unionized

worker; on the other hand the banks are quick to pass on to the non-unionized worker any gains made by the union.

(B) Labour Board Decisions

In 1959, the Canadian Labour Board decided that three employees working in a bank in a small, isolated community (none of whom were still employed by the employer at the time of the hearing), was an inappropriate unit to bargain collectively.[31] At this time, the board made it clear that the decision in this case was based solely on the particular facts presented. It stated that bank employees were covered by the Act (references to the Act are to the precursor of the present Canada Labour Code) and that the board would consider all applications concerning bank employees with the purpose of giving effect to the intent of the Act. Although the board did not specify exactly what a viable unit would be, it clearly left the door open. It is highly unlikely that this decision stood in the way of organizing bank employees for 20 years.

In 1967, another tactic for organizing bank workers was struck down.[32] Employees engaged in cheque clearing work only, and working only at night, attempted to argue that their working conditions were sufficiently unique to characterize them as a bargaining unit. This attempt to create, in effect, a "craft" union was rejected by the board. The board, noting that other workers did this work, albeit not exclusively, saw problems if the bank workers were divided up in this manner. Although the board had, in the past, accepted small clerical locals separate from co-workers who performed different tasks, it rejected the attempt of the cheque clearers to rely on this precedent. It cited as a reason that these

small locals were voluntarily recognized by the employer, who had a history of bargaining with the union involved.[33] Significantly, in this decision the board did not comment on the size of the unit, it merely rejected the idea of organizing these employees along functional lines. Organizing branches on a functional model would have led to even more fragmentation of an already geographically fragmented work force. Had this unit been recognized, it would have opened the door to further organizing attempts, but in the long run would in all likelihood have led to insurmountable problems in the future.

These two decisions were made prior to the major reorganization of the Canadian Labour Board that occurred in the early seventies. The early decisions of the board were not widely reported; therefore, the impact that they actually had on union strategy may well have been minimal. By the same token, however, the board did not take an aggressive role in deciding or even giving direction in what would comprise an appropriate unit to organize. While the board holds sole authority in this determination, its modus operandi appears to be one of forcing the unions to adopt a trial and error approach. Perhaps a more direct response from the board would have put the union in a position of being better able to use their limited resources to organize the work force. As the matter stood almost 20 years after the initial certification application in the banking area was rejected by the board, unions were still in the position of not knowing what an acceptable bargaining unit would be.

In 1977, when SORWUC managed to organize a branch of the Canadian Imperial bank of Commerce in downtown Vancouver, the Canadian Labour Relations Board accepted the branch as an appropriate bargaining unit.

They noted that a "consensus" had been reached between labour relations boards that a single location unit was appropriate. It optimistically suggested that the employer and the union would develop a common collective agreement covering similar working conditions. These decisions have been amply commented upon by other writers.[34]

During the past five years, the board has been involved with numerous applications from both the banks and the unions attempting to organize the banks. A number of them dealt with unfair labour practices.[35] Without dismissing the importance of these decisions to the individuals involved, by and large, no new ground was broken. The number of unfair labour practice complaints brought by the unions indicates that the organizational and recognition stages were only the first steps in what would prove to be a long road toward achieving meaningful collective bargaining in this sector. Rather than reviewing these decisions, the writer wishes to comment on three decisions which the board was asked to make. These decisions were of real significance to the organizing effort as a whole. It is hoped that from this discussion an assessment can be made, by the reader, of the board's ability and readiness to respond to the issues raised in attempting to organize banks. Specifically, I refer to the interpretation of Section 148(b) of the Canada Labour Code -- the imposition of first contracts and the reconfiguration of the bargaining unit.

(i) Section 148(b) Decisions

This section has been the subject of much controversy. It states that once notice to bargain has been given, "the employer shall not alter the rates of pay or any other term or condition of employment or any right

or privilege of the employees in the bargaining unit...unless the bargaining agent consents to the alteration."[36]

Similarly worded sections appear in provincial labour statutes and have been subject to interpretation by the provincial labour boards.

The question to be addressed is, Does the employer have a duty to give unionized employees annual increases and merit increases that were more or less automatic in the past, prior to a contract being settled? The provinces have responded by saying "yes".[37] They argue that the purpose of the provision is to maintain working conditions as if there is no union and therefore the employer must operate as he did in the past. The CLRB took a different approach, which is equally supportable by the language, maybe even more consistent with the actual wording, but totally novel in labour history. The board said that a freeze is a freeze, and nothing can be changed without the union's consent.

The position of the provinces has been characterized as a "status quo ante" freeze or more descriptively as a "business as before" situation; while the position initially taken by the federal board was described as a "static freeze."

The provincial position was not without its critics. Lennon outlines the problem of the status quo ante freeze as follows:

> Pinning the <u>status quo</u> on the individual contract of employment, a legal fiction at best, and a mockery of the very notion of contract at worst, has the potential to undermine the entire concept of a freeze. It is difficult to maintain that such a contract does not imply great latitude for the very kind of unilateral employer action that section 148 and its ilk are designed to prevent. The (Ontario Board) concept of 'terms and conditions of employment', has been used to uphold layoffs and changes in hours of work during staturory freeze, as well as wage and benefit increases opposed by the negotiating union.[38]

Yet when the federal board fashioned an innovative interpretation it was widely criticized.

The first discussion of this section as it relates to bank workers came when an unfair labour practice complaint was laid under section 184.[39] On the basis of the facts, the board took the view that the activity of the bank was not motivated by anti-union animus, and dismissed the complaint. The dissent decision amply criticizes that decision. More relevant to this discussion is the fact that the board went to some lengths to discuss section 148(b), which they felt would have been a more appropriate focus for the union's complaint.[40] In passing, the board commented that, had the bank instituted pay raises to non-unionized employees after notice to bargain had been given, this would not have violated the section. This is directly opposed to how similar provisions of provincial statutes have been interpreted.

The result of the Federal Labour Board decision was this: the employer continued to have the right to deal with its non-unionized employees, those who were outside the bargaining unit, but it could not in any way alter the terms or conditions of employees within the bargaining unit even if these alterations were expected (for example, annual merit increases), unless the union consented.

Prior to instituting a general wage increase, the banks made a practice of requesting the consent of the union to apply the general annual increase to those employees in the bargaining unit. However, the annual increases would not be paid to bargaining unit members unless the union accepted these annual increases as a final settlement of the wage term of

the collective agreement. This position was of course unacceptable to the union.

There was more to the decision than this, however. When the board considered that section 148(b) had the effect of creating a partnership of union and management, unions acquired a weapon of far reaching potential. This decision, had it stood, could have paved the way for a new style of negotiating. Unions reacted negatively to the decision based on the perception that whatever the decision created, it did not oblige the banks to pay increases to organized workers. When this decision was made public, the SORWUC membership fell dramatically.[41]

This decline has been laid at the door of the Labour Board; however, perhaps the union could have used the decision to a better advantage than it did. In later decisions[42] the board explains at greater length its reasons for interpreting s. 148(b) as it did. The board reasoned that once the employees chose to be represented by the union, they no longer dealt with the employer on an individual basis. It said that when notice to bargain was given, management rights were suspended and, in effect, management had to regain its right to deal with its employees and this must be through the union. In effect, it says that the employer is no longer the sole master. It was hoped that this decision would have the effect of forcing the bank to negotiate. Since the employer could do nothing without the union's consent, including firing, hiring, transferring, ordering supplies, or installing another teller machine, the board reasoned that the employer would be anxious to settle the contract so that normal day-to-day operations would again rest in the employer's hands. Management and union were, in effect, dealing with a total pie which could

be divided only at the bargaining table. Vis-à-vis employees outside the bargaining unit, management, or course, could do as it pleased. The fact that unionized employees would have to wait for increases was the price they had to pay, which is the same price they would have to pay each time an agreement came open. It was theorized that by enabling the union to exercise veto in respect to the management of operations, the wait for increases would not be too long, as the bank would quickly move to regain its right to manage. By maintaining the status quo in management rights, as it did under the provinces' interpretation of similar provisions in their labour codes, management really had nothing to lose by prolonging negotiations, since its right to manage continued unimpaired. The only threat the union then had was strike action

This reasoning was not clearly spelled out in the board's first decision; perhaps, if it had been, unions would have seen its advantage. Rather, what the unions focussed on was the fact that raises could be withheld, and this had a "chilling effect" on organizing.[43]

Lennon argues that the new approach taken by the federal board fails to take into account the inequalities of bargaining power between the parties. It seems that the opposite position is equally tenable. It appears to me that when the board fashioned section 148(b) to create an undivided partnership between union and management, that could then be shaped by the parties, it put into the union's hands a weapon with huge potential. It was totally new and would have required the development of a new style of negotiating; and one thing is evident from reviewing the history of bank unionization -- old methods are consistently failing to work. Had the unions reacted to the decision by focussing on the new power

relationship it created, instead of on the loss of a low wage increase, members would probably have been persuaded at least to wait and see. Had the union begun to use its partnership rights to their full extent in the banks, perhaps contracts would have been settled faster.

This must be left in the realm of the unknown, because the board quickly reversed itself. Bank unions brought the matter to the board within the year, and the opposite conclusion was reached: that is, the more traditional approach of the provincial boards was adopted.[44] Then, to squelch further controversy, the board sat as a whole and confirmed its second thinking with a strong dissent.[45] In its final statement, the board said that the partnership created by certification was a relationship to bargain as equals, not manage as equals. It characterized s. 148(b) as an extension of the philosophy that an employee should not feel penalized by being a union member, rather than as an adjunct to the concept of creating incentives to bargain.

The majority of the board, in reversing the earlier decision, said: "over the years, the labour movement in almost all Canadian jurisdictions has adapted to an operating procedure once a new bargaining unit is certified, which was based upon the quasi-universal application in Canada of the doctrine of the so-called 'status quo' or 'business as before' freeze. It appears that the movement is unable, for the time being, to effect the basic transformations required by the adoption of the "static freeze" doctrine."[46] Organizers I spoke to supported this. They said they simply did not have the knowledge of the banking industry to partake in decision making. Bankers, on the other hand, seemed relieved the matter was settled.

(ii) Reconfiguration of Unit

In the issue of reconfiguration of the bargaining group, the Labour Relations Board did not attempt to take any bold or innovative steps.

Although branch-by-branch organizing, at present, seems the only viable way to unionize bank workers, there is no question that it is a very inconvenient, time-consuming and expensive way to bargain. The banks have maintained that the branch-by-branch decision be carried into negotiation. This requires the union to engage in long sessions with a bank only to have to repeat the performance with the same bank at a different location. The smallness of the units foreshadows difficulty.

There are a number of organized branches of the Bank of Montreal in Windsor, and in the fall of 1981, the Union of Bank Employees applied to have the units merged into one.[47] When it first filed its application, the union also requested the inclusion in the bargaining unit of four branches it had not previously organized. This request led to the usual investigation by the board. At the outset of the hearing, the union informed the board that it was no longer requesting this inclusion and was limiting its request of the merger of the five existing certifications.

Section 119 of the Canada Labour Code gives the board jurisdiction to "review, rescind, amend, alter or vary any order or decision made by it." The union argued that the "relationship between the parties had matured to the extent that new priorities could be considered. The merged unit would give more emphasis to the collective bargaining process... It would give more meaning to bargaining issues such as inter-branch seniority and job posting... In effect, the employer would be

forced to address issues that it can now wave off as being non-negotiable because of single branch structure."[48] Stangely enough, the obvious argument of strengthening the unit to make a more powerful unit was not presented. The employer, on the other hand, said that things were working well as they were, that the "growing pains" of the system would not be cured by a "single unit" decision. It pointed out that the branch decision was only two years old and that there was no compelling reason to change it.

The board found no evidence of bad faith bargaining or "interference" within the context prohibited by the code. It found that "the presence of collective agreements was an indication of good faith and efforts on both sides."[49] The board reiterated its non-interference stance. The board felt that the union was attempting to gain by way of s. 119 what it should get at the bargaining table, that is, inter-branch seniority. It concluded:

> In keeping with those policies of non-interference the board sees nothing in the specific circumstances presented that places this case in the "extraordinary" category where it would invoke its power to balance the scales. There is no evidence of employer wrong doing. The bargaining relationship is young and maturing... A common Certification order would give the union no more than it has now.[50]

It is significant that in Windsor the bank had, after much time, agreed to engage in bargaining with one branch, and the contract achieved would then be the master contract. But without a wider certification order, this concession is always at risk. It was thought, at the beginning of the above proceedings, that this case may well be the "next giant step in the evolution of collective bargaining in the banking industry."[51] This is because the application included four previously uncertified branches

and, therefore, would have required the board to consider the appropriateness of this larger bargaining unit.

It is submitted that the board's decision in this case was a step in the evolution of organizng bank workers; unfortunately, it was a step backward. It seemed obvious to everyone that stronger units than those resulting from single branch organizing would be required in order to negotiate worthwhile contracts. The mere existence of a contract can hardly be taken as evidence that no change is necessary. It is also hard to understand why this application to vary was treated so differently once the four potentially new units were removed. Surely, both the employer and the union would have made the same arguments in either case. It is unfortunate that the board would require "extraordinary" circumstances prior to varying a unit. The board's decision in this case sets up a double-edged sword against the union and also strikes a blow at collective bargaining generally. For the union, the decision signifies the board's intention to view the union's success in negotiating a basic first contract as justification to deny the union the ability to develop larger, stronger units through merger. Without stronger units the possibility of achieving any more than modest success is in doubt. Placed in this situation, not only is the union unlikely to attract new members, but the very continuation of the small and fledgling original unit is threatened.

The British Columbia Labour Relations Board appears to be more ready to take a hand in configuring units. In certifying several small units of a chain department store, the B.C. Board indicated that the small units may be appropriate at the beginning of the organizing drive so as not to deny employees the right to bargain;[52] however, it went on to say that

the union did not have property rights in the continued existence of certifications and warned that once there has been time to "put down firm roots then (the board will) expect the unit to merge or be enlarged rather than multiply."[53]

This approach was used in the Cunningham Drug Store case.[54] The union applied for five separate units. When the employer argued "inappropriate unit," the British Columbia board amalgamated them into one unit. On appeal, the Supreme Court of Canada ruled that the board had the power to change the configuartion to the most appropriate unit, and had properly exercised it.

(iii) Imposition of First Contract

A third area to consider is the board's response to a request for imposition of first contracts. To date, only one request has been made on behalf of bank workers and it was refused.[55] The provision of the Canada Labour Code on imposing first contracts was copied from the British Columbia Labour Code. This provision, embodied in s. 171.1, was introduced into the code in 1978, so as yet there has been little experience with it. Such a provision recognizes that, despite all the provisions of the code, sometimes extraordinary measures will be needed to force parties to come to terms. Muthuchidambaram explained the assumptions behind the sections:

> First, the terms and conditions of employment should be settled by mutual agreement of the parties concerned, not be imposed from the outside; second, only on rare occasions and for valid and urgent reasons settlement must be imposed from without. These assumptions are vindicated through a statutorily built-in double screening procedure. First, the Minister must decide whether a particular dispute warrants action under this provision. Second, upon referral, the board itself is required to 'inquire into the dispute' in order to determine the advisability of imposing an agreement or taking an alternative course of action.[56]

There is no question that the board will only use this power in very extraordinary cases. The imposition of a first contract is to act as an inducement to bargain rather than a tool to actually settle disputes. "The board also firmly believes that the worst settlement that might be agreed to by a party is worth a hundred times as much as an imposed settlement..."[57] It appears that the provision is to be used when there is "intransigence" on the part of the parties (or party). When considering the situation of the Royal Bank branches in Quebec, the board decided, despite the length of the dispute and evidence of illegalities on both sides, that no agreement would be imposed. The board made it clear that the mere lack of an agreement would not be enough, as "Nowhere is it stated that the parties must always and unfailingly conclude an agreement."[58] It emphasized this by stating: "The board has indicated quite clearly that it is not a sufficient condition for the use (of the section) that negotiations have broken down and a long strike has ensued, and that the remedy is intended only for the very exceptional case, the one in which the real stumbling block to the agreement is <u>employer distaste for the process of collective bargaining as such</u>."[59] It refuses to be used to obtain provisions that should be bargained for, or to allow one party or the other to save face. In this situation, the union had called a strike. The board comments that the union should have known that the employer would continue to operate and would use legal means available to end the work stoppage.[60] The board recognized that the parties were at an impasse, but did not wish to "create another avenue which would allow union and employer negotiators to develop the impasse which gives them access to Section 171.1 in an attempt to obtain a little more than what they could get at the bargaining table."[61]

Although some may wish that the board would use section 171.1 to tip the power balance, in the bank situation, this would be a misuse of the board's perceived role. On the facts of any given battle, one might hold a difference of opinion as to whether a contract should be imposed, and, indeed, in the above case, Mr. Archambault issued a 65-page dissent.

Even if the Labour Relations Board were more ready to step in, in the first agreement situations, it would not necessarily have the long term effect the union desires. If it were generally believed that the board was prepared to get parties over this "hump" it would merely result in a change of strategy, so that the real power struggle would come at the time of second contract negotiations, when the parties were "on their own."

Muthuchidambaram studied the use of the imposition of first contracts for the first four years it was available in British Columbia. The figures are of interest:[62]

	1974	1975	1976	1977	Total
Applications	17	9	0	1	27
Disposition:					
Contract imposed		8			
Application rejected		6			
Settled with board's assistance		16			
Withdrawn		2			

This illustrates that contracts have been imposed in less than one-third of the cases for which request for imposition was made. The dramatic decline in applications over the years indicates that other, more traditional means of contract settlement will continue to be the norm. That over half the applications were settled "with the board's assistance" using, what Muthuchidambaram characterizes as "mediation-cum-arbitration"[63] may well show the real strength of these sections.

PART III - NEW DIRECTIONS

Introduction

Barriers to organizing bank workers are many and varied. First, the bargaining units are geographically dispersed and the membership comprises only a small fraction of the work force even within any given branch. Second, during an organizing campaign, this group of workers, like any similarly situated employees, is subject to pressure from both the union and the employer. In the absence of an independent and accurate source of information it is difficult for the employees to assess the merits of the opposing positions presented. Third, the size and strength of the banking industry, as an employer, makes it possible to instill in employees the perception that a move toward unionization would incite retaliation by the employer. Consequently, any employer-initiated change in terms or conditions of work during an organizing campaign when sensitivities are heightened can have an immediately chilling effect on unionization.

(A) Organizing Strategy

Many myths concerning women and work and women and unions have been shattered over the past decade. Women, even with family responsibilities, do work and do join unions.[64] To a great extent, women's desire for collective action is entirely predictable -- they want to have some voice in determining the compensation they receive for their work and the environment in which their work is performed. Lowe's work in this area demonstrates that the powerlessness of the worker is a key factor in

deciding to join a union. The union is seen as an instrument to be used in reducing the employer's control. He states, "Employees who become collectively aware of the general arbitrariness in management decision making, regardless of the issue, are prime candidates for unionization."[65]

This analysis of why employees, in general, join unions is of interest in the consideration of bank unionism, not just because of its relevance to the low-level clerical worker, but also because of its potential relevance to the changing status of the branch manager. When the unions and the labour board looked at the issue of the "appropriate unit," they concerned themselves primarily with the geographic size of the unit. It is at least as relevant to look at the people within the unit. It is important not to come to conclusions about a person's status by simple reference to job title. Banks are huge corporate entities highly centralized in their decision making. A close examination of the role of the branch manager will illustrate that he or she is a very tiny cog in the wheel.

In the early decisions regarding the certifications of bank branches it was accepted, without argument, that managers were outside the bargaining unit. This view was reinforced both by workers and the unions who accepted, without question, the traditional view of the bank manager. For its part, the bank wanted to keep the units small; thereby quaranteeing a community of non-unionized workers within the branch. The union's acceptance of the view that "management" was "management" gave the bank executive a ready tool to divide an already small working group.

The Canada Labour Relations Board has issued numerous decisions regarding exclusions from the bargaining unit based on section 107--

exclusion of persons "who perform management functions." It is thought that persons in positions of authority are better able to bargain for their rights as individuals, and further, that they are "compensated by other rewards that come with the exercise or participation in the exercise of authority."[66] It cannot be argued that branch managers do not perform supervisory duties. Historically, supervision of other employees was taken to be an important indication of management function; however, this is no longer the case. This is underlined by the fact that section 125 of the Canada Labour Code has a specific subsection allowing the board to certify, as an appropriate unit, a group of employees who supervise other employees. The criteria used by the CLRB to determine whether a person is in fact a manager, and thereby denied the right to bargain collectively, includes: authority to dismiss, demote, or promote employees; decision making in job priorities; assigning of work and requisitioning of materials; participation in policy making; influence over collective bargaining decisions; and, responsibility for establishing and administering budgets.

In the Society of Telephone Engineers[67] case the board reviewed its policy in this regard. It noted that present corporate organization must be considered. The management structure within the banking industry is not materially different from the corporate structure as presented in the Telephone Engineer case. The board noted that a centralized personnel office handled hiring, and disciplinary action was taken only after consultation with the industrial relations branch. It pointed out that, although these so-called managers were highly skilled and called upon to use good judgment, they were not decision makers, and therefore not managers. "The existence of a power to decide is often the key indicator of the nature of

the role played by a person or a group of persons in an enterprise."[68] The board rejected the argument that, although these managers only made recommendations, these were usually followed, and therefore, the managers were, in fact, decision makers. It said, "This need to convince, to persuade, to seek another's consent, is not the attitude of a manager, it lies at the very heart of subordination...a recommendation, even an effective recommendation, is not a decision." In a more recent decision, the board commented on the unwillingness by parts of the community to accept the expansion of collective bargaining rights. Stating that the definition of management is a question of fact in each case, the board gave a historical overview of the "management exclusion," noting that the Woods Task Force[69] recommended that this exclusion be held to a minimum.

In the Telephone Engineers decision, the Board also refuted the "management presence" argument. "To say because a person is the sole supervisor present at a time or place creates a conflict because he must be the 'management presence' is to think of conflict of loyalties in an outdated framework."[70]

In 1977, when the board reached the decision that a local bank branch was an appropriate unit, it went to some lengths to describe the organization of banks. Branches were described as non-autonomous. "For ease of administration, efficiency, uniformity and cost reduction, services and policies are suplied to the branch by the regional and general (i.e., head) office."[71] Further, it is explained that personnel policies are created at head office; all forms are standardized; all personnel decisions are only "recommended" by branch managers, and are then studied at regional office, and decisions are taken by head office. Branch managers can give

written reprimands, but all other disciplinary measures are decided by higher authority. The manager can decide on dress codes, daily breaks and minor grievances, but even such matters as vacation schedules are approved by regional office. Banks tend to rely on personnel to negotiate contracts. Not only are branch managers not part of labour negotiations (although they may be present as observers), at least one bank did not feel that the manager was capable even of reviewing the negotiated contract with the employees in a fair way, so sent someone from head office to do it.[72]

The Bossen study[73] revealed that managers are not well paid and are subject to constant transfer. As banking changes, the role of the branch will change. Less actual capital will be handled within a branch as the operations become more computerized. This computerization of day-to-day operations, generally carried out at branch level, portends a parallel decline in the status of the branch manager within the organization. This will be particularly true if increased technology does lead to the projected reduction in staff. This shift is already taking place in other industries. As technological change is decreasing the status of middle management, a greater proportion of white-collar workers are moving to union organization. This was explained by Angel.[74]

> At the same time that ever increasing numbers of blue-collar employees are being attracted to the status and theoretical independence attached to being labelled professionals, professionals are increasingly becoming employees of large hierarchical bureaucratic enterprises and are functioning less like autonomous individuals and more like traditional industrial sector blue-collar workers. <u>The working conditions and, therefore, the interests of the two groups in our economy, professionals and non-professionals, seem to be converging</u>. (emphasis added)

This is not to suggest that branch managers are going to rush headlong into the arms of the union organizers. They still have a strong

identification with management. However, the conditions which will redefine the status of bank managers within the organization, and which will have an important effect on their future terms of employment, may also prove to be the conditions which will encourage branch managers to move toward a group response to their changing employment situation. A strong case can be made that there would be no statutory barrier to such collective action.

From the union's point of view, having this sector organized, even if in a different bargaining unit, would greatly reduce the ability of the bank executive to undermine early union activities for other groups in the banking sector. Their ability to do so would be weakened by removing the essential link the manager represents in personalizing the decisions in the bureaucratic structure of the financial industry. Perhaps this is an avenue that would lead to the development of a unit strong enough to obtain contracts that would make unionism attractive to bank workers.

(B) Federal Ombudsman of Labour

Perhaps the most significant barrier to any worker who is being asked to consider unionization is fear. Fear is fueled by misinformation and the inability to evaluate adequately information (often conflicting information) presented to the individual by the interested parties.

Arthurs says of the movement forward made in the area of labour legislation, "As the state has moved from a posture of hostility to labour, through neutrality, to active protection of workers' rights, employer action which interferes with these rights has been progressively curtailed."[75] The problem remains, however, that many workers do not know

that the law has progressed into the twentieth century. The literature and union organizers were unanimous in their comments that the biggest barrier to women bank workers joining unions was "fear." Graham Lowe stated it this way: "The dependency which paternalism generates made many employees fear management reprisals should they support the union. It is this fear factor which constitutes the greatest obstacle to the growth of the unions in banking."[76] Knowledge is the best antidote to fear. Fear grows in a situation where people are unsure of what the consequences of action will be, when they are receiving information that challenges the status quo and do not have the resources to evaluate it adequately. In situations like these the employee needs a reference point that is outside the area of conflict; one that has credibility.

When six women in Vancouver decided that they wished to act collectively in their workplace, they had no knowledge of unions.[77] One had been told by a union representative that bank workers were prohibited from joining trade unions by The Bank Act. In Jarvis, Ontario, women in the same situation contacted a union that had recently had a lot of press. This union turned out not to have jurisdiction to organize bank workers. The success of organizing women in Windsor is often related to the fact that Windsor is a "union town" and, therefore, people are familiar with trade union activity. In their book, Getting Organized,[78] Cornish and Ritchie make the point that the law does offer protection to workers, and would be helpful if only workers knew about it. Unions, themselves, have failed in their efforts to educate the unorganized. The media's attention to union activity focusses on crisis situations. The public's view of unions is coloured by this emphasis. Ed Finn, in an article entitled

"Deterrents to Unionization",[79] says, "The usual explanation for Canada's relatively low rate of unionization, and that of the U.S., is that unions in North America have not yet won the kind of respect and acceptance that have been accorded unions in Europe and other parts of the world." He also speaks of employee fear of management retaliation. This fear is heightened by the fact that firing for union activity still does take place. The eventual rehiring of the worker comes too late to curb the damage done to the organizing campaign of the union.

The Canadian Manufacturers Association has a service for its members called SERVICENTRE. This is a direct line to "fast and accurate answers to your questions on personnel and industrial relations," to quote the brochure. It purports to provide information on a wide range of topics, including labour relations and employment standards, personnel practices and working conditions, government programs, including Canada Pension, Unemployment Insurance and Employment Assistance Programs, as well as information about federal and provincial skills training programs and immigration procedures.

These circumstances suggest the need for some agency whose mandate is directed towards providing reliable information on employees' rights and trade union development. This would be particularly useful to a worker during the embryonic stages of organization. Present government agencies are not appropriate to fill this role. Both Labour Canada and the Canadian Labour Relations Board must maintain their neutral stand in order to be effective in their respective roles. This severely limits their ability to give supportive information to the non-organized worker who wishes to unionize. Of course, factual questions will be answered, but in this area, the giver of information must be prepared to do

more than this. To meet this very important need, consideration might be given to the creation of a Federal Labour Ombudsman's Office to disseminate, in a creative and assertive way, information to the unorganized worker.

The gulf between having a law in place and knowing you have the protection of the law would thus be effectively bridged.

(C) Changes to Legislation

(i) Freedom of Speech

The present Labour Code takes a permissive approach to the activities of the parties involved in the process of forming a new relationship between the employer and employee in the workplace. It is possible that in the case of a particularly reticent employer minor adjustments to the Labour Code would make the law more responsive to the stresses of this potentially volatile period.

It is strongly expressed by organizers that there is a need to limit the employer's role in the organizing and certification process. By statute, the employer's role is circumscribed, and the employee has specific protection from anti-union action taken by the employer. Yet, there remains a real problem in this area. Clearly, the employer has some role to play. Some would argue that the employer is not "an interested party" to consideration of the issue of the employees desire to join a union. This argument isolates the organization and certification process in a vacuum. Strictly speaking, it is up to the employee to decide if she or he wishes to act collectively with co-workers, and it is up to the union

to convince the employees that it can act effectively as the agent of the collective. From that vantage point, there appears to be no reason to allow any employer involvement. That reasoning, however, ignores the fact that the result of the employees' decision will, if the union is even minimally effective, dramatically change the employer's ability to manage as he did before. If it did not, there would be no point to the exercise. It is futile, in my opinion, to create this vacuum. The purpose of the certification is to change the relationship between the employer and employee, and the employer obviously has an interest in that change. That is not to say that the employer should be given a free rein to use his considerable power to further his own self-interest in this matter. Lines are difficult to draw, and rules are difficult to enforce, especially when dealing with areas as nebulous as "harassment," "intimidation," and "anti-union animus". Although there is legislation prohibiting unfair labour practice which, at first glance, appears wide in scope, on closer scrutiny it appears that it may not be sufficient.

In a situation where the spirit of a law has not been followed, it may be necessary to enlarge the letter of the law. The non specific wording of the code invites ingenuity in fashioning new kinds of conduct expressly designed to spurn an attempt to unionize. Perhaps clearer language is required to itemize what forms of conduct are and are not permissible. It cannot be emphasized strongly enough that the early stages of organization of a trade union create a climate of both excitement and concern for the worker. It is a time when the employee is particularly vulnerable and needs the fullest protection the law can give.

At the same time, management must maintain its ability to

communicate with its work force. The Woods Task Force recommendation in this area is relevant:[80]

> Freedom of speech for management ought to be recognized as a general right; any infringement thereon should be justified in specific terms. There is one circumstance in which restriction is justified: where union representation is an issue. An employer who opposes certification of a union should be limited to defending his record as employer through the statement of facts, and to rebutting union allegations and premises, without threat or promise of future action. In other circumstances we see no case for restraining free speech beyond prohibiting threats of unlawful consequences."

The employer will want, then, to be able to give facts about his own business. This should not be used to allow the employer to make predictions about the effect the union will have on the ability of the business to prosper, as this would become a licence for the employer to predict job loss and closures. The area of "rebutting union allegations" may well be limited to allegations made about the employer's business operations. During negotiations, the employer will wish to communicate with the employees about the contract offer. The problem area seems to be mainly focussed on the sensitive period between initial organizing and the signing of the first contract. Once the first contract is signed, the union has a greater opportunity to gain the kind of presence necessary to balance the influence of the employer.

What seems to emerge is the necessity to bring early organizing "out of the closet," to make it less clandestine and more open. In the past, the union has felt constrained to operate covertly until it has sufficient strength to rebut the employer's attempt to solidify his employees' loyalty.

The employer's role in the actual certification process before the Canada Labour Relations Board has been criticized by other writers.[81]

Although the process before the board has been characterized as adversarial, it does not, on close examination, have the essential qualities of an adversarial hearing. The hallmark of a truly adversarial process is that the parties to the dispute define the dispute and control the process. The judge must be controlled by the parties' decisions and only answer the questions asked. The power of the board to investigate at the workplace of the employer;[82] to determine the appropriateness of the unit, regardless of the expressed wishes of the parties;[83] and to impose a first contract[84] on the parties; are all clear indications that the board can take a very active role and does not see itself as a passive participant in these proceedings. By the same token, the board must maintain its credibility by treating the parties fairly.

The questions at a certification hearing are: "does this union represent these employees?" and "do these employees form an appropriate unit to bargain with the employer?" In the first question, the employer clearly has no interest, and in the second, his contribution might just as effectively be limited to answering questions put to him by the board.

This approach would recognize that the employees are capable of raising questions on the representation issue, and the board has the exprience and expertise to determine appropriateness. The board's power to "investigate" allows it to gather any evidence it requires. Also, the recognition that the board does not feel restricted by a rigid adversarial model allows the board to request representation on matters it feels need exploration. A reduction of the employer's role in this area would reduce the often lengthy and expensive litigation that has characterized early certification efforts in a new industry. The financial resources of the

employer are usually substantial, compared with the union's. SORWUC was overwhelmed by a legal bill of $30 000, whereas the same amount would hardly be of significance to a bank.

(ii) Remedies for Unfair Labour Practices

Legislation dealing effectively with unfair labour practices is an essential ingredient in any labour statute. Penalties for contravention of this part of the statute must be sufficiently stringent to create a deterrent to future misconduct.

Penalties which would operate to deter the wrongful conduct of a large employer are difficult to quantify. Since it is not possible to fashion a penalty that "hurts" it would perhaps be more useful to create a remedy which would compensate those disadvantaged by the misconduct.

The maximum monetary penalty under the system is a $1 000 fine. Perhaps a like amount of money should be payable, not to the Crown, but to the union as compensation for the damage done by the employer's conduct. In this way, the employer's wrongdoing would have the consequence of directly helping the union and the employees, even though the penalty did not financially hurt the employer.

The concept of compensating the victim is not widely accepted in criminal law. A crime committed is seen, theoretically, to be a crime against society. The victim is merely a witness for the state's case and, therefore, penalties are paid to the state. The state has recently, however, recognized that victims should be compensated, and has set up compensation schemes to carry out this function.[85]

Labour law does not have to be constrained by precedent in the criminal area, but, if the enforcement of the code by penalties is seen as

being quasi-criminal, recent Supreme Court judgments may constrain the board from giving what appears to be a tort remedy in a quasi-criminal sanction.[86] It should be stressed, in this regard, that the Labour Code is a unique statute set up to deal with a unique situation. Other remedies which the code has fashioned in the area of unfair labour practices, for example, letters of admission of wrongdoing to employees, indicate that it is not constrained by traditional criminal sanctions. By leaving intact the $1 000 penal fine and creating a new remedy of a compensatory payment, the code may well escape any challenge to its jurisdiction in this area.

The Canada Labour Code and the Canada Labour Relations Board have a difficult role to play in the area of unfair labour practices. Their uniqueness and their flexibility have, in the past, allowed them to develop remedies that have been particularly useful to the parties involved. The development of a tort remedy of this kind may well be another step in that direction.

CONCLUSION

The unionization of bank workers will never be an easy task. This large group of employees is scattered from coast to coast in small work units. The problems in organizing them stem less from their being women, than from the fact that they are in low paying jobs that require a minimal amount of training, and are very expendable. Women who are entering the work force have the educational requirements to fill the jobs being offered by the bank. Because these jobs do not pay well and offer only marginal oportunity for advancement, a worker is much more likely to quit than fight, if the job becomes too unpleasant. At the same time, since such workers are relatively easy to replace, turnover is not particularly hard on the employer. Furthermore, in times of economic slowdown, such as we are experiencing presently, workers are much more likely to "stick it out" than quit, and much less likely to jeopardize their employment by taking action of which they know management disapproves.

At the same time, enlarging the bargaining unit to include managers would create more unity within the bank branch organization. Creating a federal office, with the dual mandate of actively encouraging organizing and creating a more positive concept of trade unionism, should help convince the financial sector that "times have changed and will not change back". Providing incentives to unions to open up the organizing process should assist workers in viewing the joining of a union as a sensible, rather than a sinister, decision. The employer has an interest to protect, and denying him a vehicle to express it would only result in

forcing him to take more subtle and insidious routes to get his message across. The exercise of this right of free speech, however, is open to much abuse. For this reason, steps might be considered which would define more clearly what is acceptable conduct. Finally, since it is obviously difficult to make as huge an operation as a bank feel the financial sting of a monetary penalty, it is suggested that such a penalty at least be felt as a benefit to the injured party.

A slogan of SORWUC was "Bank workers organizing -- Not impossible -- inevitable." The hope of this writer is that the changes suggested in this paper, if implemented, would make bank organizing -- if not inevitable -- at least more likely.

Factors such as low pay, an easily trainable work force, a work force that is widely scattered in tiny units throughout the country, and a work force that requires a particular orientation to organize, combine to suggest slow growth of unionization. But a stronger and more specific policy in favour of collective bargaining could reduce the impact of several of the impediments outlined in this paper.

FOOTNOTES

1 Manpower Utilization in Canadian Chartered Banks. Bossen, Marianne; Studies of the Royal Commission on the Status of Women in Canada.

2 Supra, p. 14.

3 "Total Employed, Banks and Other Accepting Establishments by Type of Work and Sex," Statistics Canada, 72-603, October 1973.

4 Bank of Nova Scotia, Port Dover, Simcoe and Jarvis Branches (1977) 21 di 439, at p. 453.

5 An Account to Settle. Bank Workers Collective; Press Gang Publishers, 1980, p. 9.

6 Stenographers and typists as an occupational group: female % of occupation: 1941 - 95.9%; 1951 - 96.4%; 1961 - 96.8%; 1971 - 96.9%. Figures from Canada Census as reported in The Double Ghetto; Armstrong and Armstrong; p. 32-3.

7 Statistics Canada, The Labour Force; 1981 Annual Averages, Dec. 1981 Cat. No. 71-001.

8 "Causes of Unionization in Canadian Banks;" Graham S. Lowe; Relations Industrielles Vol 36, no. 4, 865 at 879 p. 13.

9 Statistics Canada, 1981 Census figures.

10 "No Exit for Wives: Sexual Division of Labour and the Culmination of Household Demands." The Canadian Review of Sociology and Anthropology, Vol. 12, p. 424-439.

11 supra 1, p. 4.

12 See for example: Canadian Union of Bank Employees Bank of Nova Scotia, 74 CLLC 16, 090.

13 See Lowe, supra note 9.

14 "Preparing Bankers for the Eighties," David S. Leighton, The Canadian Banker & ICB Review, Feb., 1981, p. 42.

15 "People, Machines & the Future of Banking," Peter S. Rose, The Canadian Banker & ICB Review, December, 1980, p.56.

16 "Settlement of First Collective Agreement," S. Muthuchidambaram, Relations Industrielles, Vol. 35, 1980, p. 387 at p. 390.

17 The Royal Bank estimates turnover at 33 to 36%; The Commerce estimates 31% for its female employees; Bank of Nova Scotia estimates 35% of clerical workers. Source: CLR Board decisions.

18 Mary Hatch, Toronto Dominion Bank, Human Resource Division

19 supra 1, p. 24.

20 For brief discussion of early history of bank organizing, see "Bank Workers' Unionization", Lennon, Vol. 18, #2, Osgoode Hall Law Journal, p. 178 at p. 181.

21 An Account to Settle: The Story of United Bank Workers (SORWUC); The Bank Book Collective; Press Gang Publishers, Vancouver, 1979.

22 supra 21, p. 10.

23 supra 21, p. 8.

24 supra 21, p. 105.

25 supra 21, p. 106.

26 supra 21, p. 108.

27 Information gathered from Women and Unions, Julie White, 1980; the Canadian Advisory Council on the Status of Women.

28 Information supplied by CLC research department.

29 supra 21, p. 112.

30 This analysis was done in July of 1981. Highlights included in paper are those from the CLC analysis with only minimal changes.

31 Kitimat, Terrace and District General Workers Union Local #1583 CLC v Bank of Nova Scotia; 1 CLLC (1944-59) II 18, 152.

32 Syndicat National des Employes de la Banque Canadienne Nationale v La Banque Canadienne Nationale, (April 12, 1967) 4 CLLC 67-79, II 16, 010.

33 Reference here is to the clerical locals of the Canadian Brotherhood of Railway, Transport and General Workers Union.

34 See Lennon, "Bank Workers Organization" supra 23. See this article, too, for discussion of cases concerning "timing," which I will not deal with in this paper, as the issue appears to be settled (at page 196).

35 Union of Bank Employees v CIB of C, 1980 CLLC II 16, 001, re wearing of union pin, cases brought re raises paid or not, also under "unfair labour practices" and include other grievances. Several complaints laid and withdrawn.

36 The Minister of Labour's consent is necessary prior to laying a charge under this section.

37 Spar Aerospace Products, (1978) OLRBR 859 is an example of this interpretation.

38 supra, note 21 at p. 219.

39 SORWUC v Royal Bank of Canada, Kamloops & Gibson B.C. (March '78) 78 CLLC II 16, 132. In what the union charged to be anti-union tactics, the bank gave pay raises and changed vacation provisions of non-unionized employees only after the certification of a union in some branches

40 In fact, because of the timing of the bank's action, s. 148 (b) was not available to the union. The Board's concern that a union may use s. 184 to avoid the requirement of having to obtain the minister's approval required by s. 148 (b) may be well founded, but its criticism was misplaced in this particular case.

41 supra 21, at p. 107.

42 Bank of British Columbia v Union of Bank Employees, 80 CLLC II 16, 032 and Union of Bank Employees v Bank of British Columbia, 81 CLLC II 16, 068.

43 supra, note 23 at p. 281.

44 Union of Bank Employees and CLC v C.I.B. of C., 80 CLLC II 16, 002.

45 Retail Clerks International Union v B. of N.S., 81 CLLC II 16, 110.

46 supra 45.

47 Union of Bank Employees Local 2104 CLC v Bank of Montreal; Board File: 530-699; Decision #811341.

48 supra, p. 20.

49 supra, p. 17.

50 supra, p. 22.

51 supra, p. 16.

52 Woodward Stores (Vancouver) Ltd. v Graphic International Union and Bakery and Confectionary Workers International Union of America, ICLRB, 1975, 114.

53 supra, p. 120.

54 Cunningham Drug Store v L.R.B. of B.C. and Retail Clerks Union (1973) SCR 256.

55 Syndicat des employees de Commerce et de bureau du Comte Lapointe (CNTU) v Royal Bank of Canada; Board Decision 801 267, issued September 22, 1980.

56 supra 16, at p. 398.

57 Radiomutual, LLRB, Board Reasons 675178. at p. 63.

58 supra 55, p. 15. Board here is quoting their earlier decision of CJMS, 27 di 796.

59 supra 55, p. 17.

60 supra 55, p. 19.

61 supra 55, p. 35.

62 supra 16, 401.

63 supra 17, 402.

64 "How American Workers View Labour Unions" Thomas A. Kochan, Monthly Labour Review, April, 1979; "Women in Labour Organizations: their ranks increasing," Linda H. Le Grande, Monthly Labour Review, August, 1978.

65 Bank Unionizing in Canada: A preliminary Analysis; Graham S. Lowe, Centre for Industrial Relations, U. of T., July, 1980.

66 Le Bel v CHMM in CUPE v DJRP Radio Provinciale Ltee; (1975) 77 CLCC II 16, 074.

67 Society of Telephone Engineer and Managers & B.C. Telephone Co. v Federation of Telephone Workers of B.C.; (1976) 1 CLLC 273.

68 supra 67, p. 280.

69 Canadian Industrial Relations: The Report of Task Force on Labour Relations, H.D. Woods, Privy Council Office, December, 1968, paragraphs 436, 437.

70 see also International Association of Machinists and Aerospace Workers v Quebecair and Various Employees (1979) 3 CLRBR 550; Canadian Union of Public Employees v CJRP Radio Provincial Ltee (1975) 77 CLLC II 16, 074; C.A.L.F.R.A. v Wardair Canada Ltd. (1974) CLLC II 16, 103; Empire Stevedoring Co. v ILWU Local 514, (1974) 2 F.C. 742 (C.A.).

71 Can. Union of Bank Employees v Bank of Nova Scotia 77 CLLC III 6, 090.

72 Norman Eakin of the C.I.B. of C. told the writer this anecdote.

73 supra 1.

74 "White Collar and Professional Unionization," Marina Angel, Labour Law Journal, February, 1982, p. 82.

75 "Developing Industrial Citizenship: A Challenge for Canada's Second Century," Harry Arthurs, 45 Canadian Bar Review 786, at 795.

76 "Problems and Issues in the Unionization of Female Workers: some Reflections on the Case of Canadian Bank Employees," Graham Lowe, from a speech presented to a workshop at the University of British Columbia, Vancouver, 1980, p. 24.

77 supra 5.

78 Getting Organized: Building a Union, Mary Cornish and Laurel Ritchie, The Women's Press, Toronto, 1980.

79 The Labour Gazette, August, 1977, p. 341.

80 supra 69, p. 159.

81 see Lennon, supra 20 at p. 229.

82 Canada Labour Code, s. 171.1

83 see Bank of Nova Scotia v Canada Labour Relations Board 78 CLLC II 14, 145; FC of A (March, 1978); for comment on the board's role in this area see also Trade Union of Local Engineers v Canada Pacific Ltd. (1976) 76 CLLC II 16, 018.

84 Canada Labour Code, s. 171.1

85 Every province in Canada has now set up some type of compensation board for victims of crime.

86 R v Zelensky, 1976 2 CR (3rd) 107.

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